

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:19 CR 489
)	
Plaintiff,)	JUDGE BENITA Y. PEARSON
)	
vs.)	
)	
GARY FRANTZ, et al.,)	
)	
Defendants.)	

**DEFENDANT’S MOTION IN *LIMINE* TO EXCLUDE THE MENTION OF THE
TERM “CANDYMAN” WITH REFERENCE TO DR. GARY FRANTZ**

Now comes the Defendant, Dr. Gary Frantz, by and through undersigned counsel, and hereby respectfully moves this Honorable Court to limit the testimony of Diversion Investigator Scott Brinks, or any witness, from referring to the Defendant Dr. Gary Frantz as the “candyman.” Any such testimony is unreliable, irrelevant, prejudicial, hearsay, and inadmissible under Fed. Evid.R. 402, Evid.R. 403, and Evid.R. 801. Reasons for this Motion are set forth more fully in the Memorandum in Support attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ Roger M. Synenberg
ROGER M. SYNENBERG (0032517)
MATTHEW A. KURZ (0097941)
Synenberg & Associates, LLC
55 Public Square, Suite 1331
Cleveland, Ohio 44113
(216) 622-2727
(216) 622-2707 FAX
lawoffice@synenberg.com

/s/ R. Eric Kennedy
R. ERIC KENNEDY, ESQ. (0006174)
WEISMAN, KENNEDY & BERRIS CO.,
L.P.A. 1600 Midland Building 101 W.
Prospect Avenue Cleveland, OH 44115
Telephone: (216) 781-1111
Facsimile: (216) 781-6747
ekennedy@weismanlaw.com

MEMORANDUM IN SUPPORT

I. FACTUAL AND PROCEDURAL HISTORY

On August 14, 2019, Dr. Gary Frantz was indicted in a 242 count indictment alleging the improper issuance of controlled substances outside the usual course of professional practice and not for a “legitimate medical purpose.”¹

The investigation into Dr. Frantz began in 2013 after the DEA reviewed various OARRS records of some prescriptions he had issued. On May 13, 2015, the Government executed a search warrant on Dr. Frantz’s medical office, seizing medical records and other records relating to Dr. Frantz’s treatment of his chronic pain patients. Dr. Frantz continued to practice medicine at his office until June 2017.

Within days of opening the investigation, Diversion Investigator Scott Brinks of the Drug Enforcement Administration authored an April 19, 2013 affidavit in support of request for court order in the Government’s Application for an Order Authorizing the Surveillance of and the Use of Undercover Agents/Informants. Within this affidavit, Mr. Brinks asserts that he spoke with an unidentified pharmacist who informed him that Dr. Frantz was known by an unidentified person(s) as the “candyman” in the Mansfield area. This was the single mention of Dr. Frantz being referred to in this derogatory fashion in over 8,000 documents, records and reports of investigation.

The United States Government may be calling Diversion Investigator Brinks to testify at trial. While Mr. Brinks’ testimony regarding his investigation into Dr. Frantz is admissible, any testimony referring to Defendant Dr. Gary Frantz as the “candyman” ought not be admissible.

This testimony is irrelevant under Fed. Evid. R. 402 and prejudicial under Evid. R. 403. It is also inadmissible hearsay pursuant to Fed.R. 801.

¹ Counts 198, 199, 201 and 202 were dismissed by this Honorable Court upon motion of the Defendant on 07/23/2020.

Dr. Frantz, by and through undersigned counsel, now respectfully requests that this Honorable Court limit the testimony of Diversion Investigator Scott Brinks, in addition to any other witnesses, from mentioning the term “candyman” with reference to Dr. Gary Frantz.

II. LAW AND ARGUMENT

A. Any Testimony by Diversion Investigator Brinks, or Any Other Witness, Mentioning the Term “Candyman” With Reference to Dr. Gary Frantz is Irrelevant and Prejudicial.

Any testimony offered by Diversion Investigator Brinks, or any other witness, referring to Dr. Frantz as the “candyman” should be excluded. Any such testimony is irrelevant under Evid.R. 401 and 402 and unfairly prejudicial under Evid.R. 403. Federal Rule of Evidence 402 states, in relevant part, that “(i)rrelevant evidence is not admissible.”

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. Evid.R. 401. Federal Rule of Evidence 403 states that, “(t)he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

The testimony of any witness referring to Dr. Frantz as the “candyman” is irrelevant. The term is not explained, it is not defined, and has the potential to be highly prejudicial and misleading to the jury if mentioned and misinterpreted. We do not know the basis for this unidentified pharmacist’s claims and we do not know what he meant when allegedly referring to Dr. Frantz as the “candyman.” Accordingly, any such mention of this “nickname” would be baseless, unreliable, and not have any tendency to make the existence of any fact that is of consequence more probable or less probable. Therefore, such testimony is irrelevant and inadmissible.

B. Any Testimony by Diversion Investigator Brinks, or Any Other Witness, Mentioning that an Unidentified Pharmacist Learned from an Unidentified Declarant that Dr. Gary Frantz had been Referred to as the “Candyman” is Hearsay.

Any testimony offered by Diversion Investigator Brinks, or any other witness, mentioning that an unidentified pharmacist referred to Dr. Gary Frantz as the “candyman” is hearsay and based upon hearsay and should be excluded pursuant to Fed. Evid.R. 801.

The testimony to be excluded is an oral assertion made by an unidentified pharmacist after hearing it from an unidentified declarant during the investigation performed by Mr. Brinks. This statement should not be offered by Mr. Brinks or another witness. Hearsay means a statement (oral assertion) that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Fed.Evid.R. 801

The statement that Dr. Frantz is known as the “candyman” in the Mansfield area is an oral assertion made by a party outside the current trial that Diversion Investigator Brinks and/or any witness would be making to prove the truth of the matter asserted. As such, any reference to Dr. Frantz being the “candyman” at the trial of this matter should be excluded as hearsay.

III. CONCLUSION

Diversion Investigator Scott Brinks, in addition to any other witnesses, should be excluded from referring to the Defendant Dr. Gary Frantz as the “candyman.” Any such testimony is unreliable, irrelevant, prejudicial, hearsay, and inadmissible under Fed. Evid.R. 402, Evid.R. 403, and Evid.R. 801.

WHEREFORE, Dr. Gary Frantz, by and through undersigned counsel, respectfully moves this Honorable Court to limit the testimony of Drug Enforcement Administration Diversion

Investigator Scott Brinks, as well as any other witnesses, from referring to the Defendant Dr. Gary Frantz as the “candyman.”

Respectfully submitted,

/s/ Roger M. Synenberg

ROGER M. SYNENBERG (0032517)

MATTHEW A. KURZ (0097941)

Synenberg & Associates, LLC

55 Public Square, Suite 1331

Cleveland, Ohio 44113

(216) 622-2727

(216) 622-2707 FAX

lawoffice@synenberg.com

/s/ R. Eric Kennedy

R. ERIC KENNEDY, ESQ. (0006174)

WEISMAN, KENNEDY & BERRIS CO.,

L.P.A. 1600 Midland Building 101 W.

Prospect Avenue Cleveland, OH 44115

Telephone: (216) 781-1111

Facsimile: (216) 781-6747

ekennedy@weismanlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2021 the foregoing was electronically filed with the Court. All parties and counsel of record will receive notice and service of this filing through the Court's CM/ECF electronic filing system and may access the filing through the Court's system.

s/Roger M. Synenberg
ROGER M. SYNENBERG